

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:07-CR-00194-F-1

No. 5:13-CV-00634-F

KEDRICK ANTONIO MASSENBURG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

This matter is before the court on the Memorandum and Recommendation (“M&R”) [DE-59] of United States Magistrate Judge James E. Gates regarding Kedrick Antonio Massenburg’s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-39].

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo* determination of those portions of the recommendation to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge’s recommendation, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1). In the absence of a timely-filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

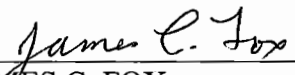
On June 14, 2016, the Magistrate Judge issued a M&R recommending that Massenburg’s

Motion to Amend [DE-51] be DENIED, the Government's Motion to Dismiss [DE-43] be ALLOWED, and Massenburg's Motion to Vacate [DE-39] be DISMISSED. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the M&R and the consequences if they failed to do so. Massenburg has filed no objections, and the time for doing expired on June 27, 2016.

Upon careful review of the M&R and of the record generally, and having found no clear error, the court hereby ADOPTS the recommendation of the Magistrate Judge. It is therefore ORDERED that the Government's Motion to Dismiss [DE-43] is ALLOWED, Massenburg's Motion to Vacate [DE-39] is DISMISSED, and his Motion to Amend [DE-51] is DENIED. The court has reviewed the arguments raised, and in light of the applicable standard, a certificate of appealability is DENIED.¹

SO ORDERED.

This, the 1st day of July, 2016.



JAMES C. FOX
Senior United States District Judge

¹ A certificate of appealability will not issue unless there has been "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). However, when a district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.